

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Inquiry Concerning Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
And Timely Fashion, and Possible Steps )  
146 )  
To Accelerate Such Deployment Pursuant )  
To Section 706 of the Telecommunications )  
Act of 1996 )

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NOTICE OF INQUIRY

COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY

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## **Introduction**

The Alliance for Public Technology (APT) welcomes the opportunity to provide further comments on the Commission's review of the deployment of advanced telecommunications services to all Americans.

APT represents almost 300 non-profit organizations and individuals that serve thousands of people, including low-income families, rural residents, consumers, minorities, senior citizens, people with disabilities, and small business owners whose lives could be greatly improved by access to advanced telecommunications networks. By making possible distance and life-long learning, telemedicine, and independent living for senior citizens and people with disabilities, these and other creative applications delivered over high-speed, broadband networks can most benefit the nation's least advantaged residents by helping them overcome the social, economic and political challenges they face.

In its *Notice of Inquiry*, the Commission urged "industry, trade associations, consumer groups, state and local governments, to respond to specific questions we [the Commission] pose."<sup>1</sup>

The Alliance therefore commends the commission's action on its establishment of a Joint Federal-State Conference on Advanced Services (August 1999). This concept, first proposed by APT in its February 18, 1998 petition to

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<sup>1</sup> Federal Communications Commission, Notice of Inquiry, CC Docket No. 98-146, Adopted February 17, 2000, Release February 18, 2000, p. 4.

the Commission<sup>2</sup> is a welcome first step towards policies that will support the development and diffusion of community-driven applications to further the goals of Section 706. The challenge now is to maximize implementation of the Joint Conference and other strategies to create incentives for "reasonable deployment."

APT has been involved in this dialog from the beginning and has taken a leadership role in promoting the deployment of advanced services throughout this nation. APT is also working with the Joint Conference on this issue and will address the following questions in the Commission's NOI:

1. *What is "advanced telecommunications capability"?*
2. *Are advanced telecommunications capabilities being deployed to all Americans?*
3. *Is overall deployment "reasonable and timely"?*
4. *If deployment is not timely and reasonable, what actions will accelerate deployment?*<sup>3</sup>

We believe these questions need be addressed in the context of the elements of a strategy for federal-state action advanced by APT in its statement presented to the Joint Conference on Advanced Services at its initial hearing on March 8, 2000. That statement is the essential backdrop for this filing and is attached as **Appendix A**. The opportunity to further comment on the need to expand deployment of advanced services and some approaches that can be taken is welcomed by APT and its members.

<sup>2</sup> Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, February 18, 1998, p.20.

<sup>3</sup> Ibid., p.5.

# **1. What is “advanced telecommunications capability”?**

From its *First Report*, the Commission defined “Advanced Telecommunications Capability”...“as having the capability of supporting, in both the provider-to-consumer (downstream) and the consumer-to-provider (upstream) directions, a speed (in technical terms, ‘bandwidth’) in excess of 200 kilobits per second (KBPS) in the last mile.”<sup>4</sup>

APT believes advanced telecommunications technology is developing rapidly due to the utilization of the innovative and creative capacity of the marketplace. There is no way to predict how far and how fast these technological innovations will proceed, particularly as we enter the Internet 3 phase of development and applications. What is obvious is that the evolutionary concept of universal service in Section 254, and collateral action taken by the states, is no match for the creativity and innovative capacity of the marketplace. We know from experience that explicit funding mechanisms, although essential instruments for advancing public policy in a market-oriented regulatory regime, are also vehicles for gamesmanship in their implementation. In the face of their practical limitations in keeping abreast of market development, it is critical that the definition of universal service be up-graded as Internet usage becomes more pervasive in the general population. State legislators and regulators are moving in this direction and action by the FCC to upgrade its definition should not wait on the outcome of this proceeding. The focus of this inquiry is to find ways “to make the marketplace work for everyone on an explicit funding base for universal

<sup>4</sup> Ibid., p.6

service that can be pushed to the limits of political and competitive reality.

**2. Are advanced telecommunications capabilities being deployed to all Americans?**

It is a forgone conclusion that without market-oriented public policy incentives, major sectors of our society will always be left in the dust of the digital age. That is why APT has been advancing the need for the ubiquitous deployment of advanced telecommunications services throughout the nation. In our September 14, 1998 filing with the FCC on this issue, we urged the Commission and the states to advance “social compacts” in connection with mergers and the implementation of productivity factors where they are employed in price cap regulation. We combined this with pro-active policies, urging the establishment of a “federal/state policy framework to encourage, facilitate, and support community/provider partnerships and related market-oriented processes which are designed to (a) aggregate effective demand for community-based application and information technologies, and (b) build a strong “demand pull” base for advance infrastructure investments in the home.” In a subsequent filing, we further stated “it is imperative that the Commission join with the states to establish policies that perpetuate partnerships between telecommunications providers and community-based organizations to nurture demand for advanced services in communities where carriers presume it does not exist at sufficient levels to warrant investment.”<sup>5</sup>

APT believes that the reality of the marketplace has not been confronted.

This concern is developed in elements three to six of APT’s statement to the Joint

<sup>5</sup>Alliance of Public Technology, September 14, 1998 Comments to the Federal Communications Commission, CC Docket No. 98-146, p.5.

Conference (Appendix A). Absent proactive policies to build markets that are responsive to the priorities and needs of marginalized communities, we appear to be drifting into a new wave of philanthropy that is failing to come to grips with the need for “social capital” to help community-based organizations and technology centers to function as integrated infrastructure (community-based domains on the web) with the technical capacity and nurturing capability to develop, beta test, and market innovative products and services crafted to the needs, priorities, and cultures of marginalized communities. Because of “opportunity costs,” competitors in a market environment will not invest R&D for applications development where they need to nurture the demand before it can be plucked. There needs to be a new focus on philanthropy as social capital and corporate investments that support this new market-oriented role of non-profits and community-based centers committed to the diffusion of advanced technologies. Further, as stated in element two of our statement to the Joint conference, we “should seek to uncover how communities are wrestling with the problems of achieving ubiquity in both infrastructure deployment and applications development where federal and state policies leave them in the lurch.”<sup>6</sup>

### **3. Is overall deployment “reasonable and timely”?**

As APT has repeatedly stated, the answer is **no**. There is a vacuum left by federal and state regulators for determining and developing community authority to require partnerships with companies deploying advanced services. The “digital

<sup>6</sup> Testimony of Donald Vial, Chairman, Public Policy Committee, APT, at the Initial Hearing of the Federal-State Joint Conference on Advanced Services, p.3.

divide” still exists in this nation and the *have nots* are losing the considerable rewards to be found in the new E-economy that is being driven by the development and deployment of advanced services. APT urges the Commission to sharpen “its focus on how the creativity and innovative capacity of the marketplace might be extended to communities marginalized by the very operation of market forces.”<sup>7</sup>

**4. If deployment is not timely and reasonable, what actions will accelerate deployment?**

In its “First Report, we [the Commission] noted APT’s idea of ‘demand pull,’ which involves community leaders pooling the demands of underserved areas and consumers and thus attracting profit-driven suppliers.”<sup>8</sup> APT strongly believes that the Federal-State conference must fulfill its mandate and develop best practices, recognizing that communities have a major role to play in this process and will be the direct beneficiaries of the deployment of advanced services. The Joint Conference should provide communities with the necessary support to fund developing partnerships that will result in the deployment of advanced services. Work should be through community technology centers or similar entities that will allow for the creative development of applications to be beta tested in such ways that will prove to be useful in providing market

<sup>7</sup> Ibid., p.2.

<sup>8</sup> Federal Communications Commission, Notice of Inquiry, CC Docket No. 98-146, Adopted February 17, 2000, Release February 18, 2000, p.19.

market information to investors. The successful demonstration of the uses of technologies through these centers will be the catalyst for marketplace investment in these communities, thus overcoming the negative economic and social aspects of the “digital divide.”

APT respectfully urges the Commission to consider its comments to ensure that all Americans reap the rewards of equality in access to and delivery of advanced telecommunications services.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'D. Vial', with a long horizontal flourish extending to the right.

Donald Vial  
Chairman, Public Policy Committee  
Alliance for Public Technology  
919 19<sup>th</sup> Street, NW, 9<sup>th</sup> Floor  
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## **APPENDIX A**

***Testimony of Donald Vial, Chairman, Public Policy  
Committee, APT at the Initial Hearing of the Federal-State  
Joint Conference on Advanced Services***

**Statement of  
Donald Vial, Chairman, Public Policy Committee  
Alliance for Public Technology  
Initial Hearing of Federal-State Joint Conference on  
Advanced Services**

**Washington DC, March 8, 2000**

The Alliance for Public Technology (APT)<sup>1</sup> appreciates the opportunity extended to us to participate in this initial hearing of the Federal-State Joint Conference on Advanced Services, which is to be followed by six regional field hearings. We take some pride in being the lead organization to have advanced the need for a Federal-State vehicle to breathe life into the ubiquity commitment of Section 706 to “deploy advanced telecommunications capability to all Americans.” We also feel privileged to have been able to work closely with the leadership of NARUC and the Commission in helping to shape the structure and mission of the Joint Conference on Advanced Services. This initial hearing gives us an opportunity to reflect on some of the critical issues and challenges that provide the backdrop for the scheduled field hearings.

In his recent article in *the Federal Communication Law Journal* entitled “Strategies to Promote Advanced Telecommunications Capability,”<sup>2</sup> NARUC President Bob Rowe has made a substantial contribution to the work of the Joint Conference in proclaiming Section 706 “A Call for Action, Not an Invitation for

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<sup>1</sup> The Alliance was founded in 1988 as a non-profit, tax-exempt membership organization with the charter to foster affordable access by all consumers to advanced telecommunications services. APT’s Board of Directors governs the organization.

<sup>2</sup> Bob Rowe, “Strategies to Promote Advanced Telecommunications Capabilities,” *Federal Communications Law Journal*, Vol. 52, February 2000, p. 383.

Argument.” We are pleased that in outlining the scope of the challenges confronting the Joint Conference, he specifically referenced APT’s Section 706 filing<sup>3</sup> in early 1998, in which we called for joint federal-state action concerning section 706. In that filing -- in the context of specific recommendations to remove regulatory barriers to facilities-based infrastructure investments in broadband capacity -- we advanced pro-active policy suggestions requiring federal-state collaboration: (a) to encourage the development of social compacts in connection with price cap regulation and the approval of mergers and acquisitions; and (b) to advance community-based partnerships as drivers of competitive investments in infrastructure and life-enhancing applications of the advanced technologies that empower underserved communities as they expand the “effective demand base” for sustainable market building.

More specifically, the focus of my opening remarks is on a recommendation in Part III of our 706 filing<sup>4</sup> that perhaps was a little ahead of its time in urging the FCC to get a sharper focus on how the creativity and innovative capacity of the marketplace might be extended to communities marginalized by the very operation of market forces. In urging the Joint Conference to take another look at that section, a brief reference to some relevant text may be helpful:

“APT firmly believes that even as the Commission develops a regulatory scheme that promotes infrastructure investments in accordance with Section 706, “reasonable and timely” deployment of advanced telecommunications capability prescribed in the Act will not occur unless telecommunications companies and service providers perceive that sufficient demand exists. The Commission, therefore, must take decisive and creative steps to ensure that its policies support the development of community-driven mechanisms, especially partnerships of community-based organizations (“CBOs”) with competitive providers. These partnerships should focus on applications development and deployment addressing “life’s needs” -- in particular applications that help to raise income levels of marginalized communities.

We believe this nurturing of community-based partnerships and other mechanisms should take the form of a federal-state framework for policy implementation that recognizes the essential role communities play in making the telecommunications marketplace work for everyone. In keeping with the concept of devolving policy implementation, the central purpose of such a framework is to bring additional resources to urban and rural municipalities and regional bodies, which feel compelled by the competitive environment to develop telecommunications policies of their own (within the limits of their authority).

[We urge the establishment of] a federal/state policy framework to encourage, facilitate, and support community/provider partnerships and related market-

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<sup>3</sup> Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, (February 18, 1998).

<sup>4</sup> Ibid at 28.

oriented processes which are designed to (a) aggregate effective demand for community-based applications and information technologies, and (b) build a strong "demand pull" base for advanced infrastructure investments to the home."<sup>5</sup>

I think it is important to remind ourselves that we have embraced the marketplace as the main driver in the deployment of advanced telecommunications and information technologies because of its unmatched capacity for creativity and innovation. Unfortunately, there are few indeed who would accuse the marketplace of having a penchant for egalitarian distribution of all that creativity and innovation. In fact, the Joint Conference, in its regional meetings, should give special attention to overcoming the resistance of market forces to unlocking the creative and innovative capacity of marginalized communities to use the advanced technologies to advance their conditions of life and labor. In this connection, given time constraints, I can only list a few of the challenges that need to be addressed.

1. Realistically explore both the potential and limitations of relying on explicit funding mechanisms for universal service under Section 254 to achieve the goals of Section 706. The vision of universal service under the Act is evolutionary, expanding its definition, as advanced usage becomes dominant. A number of states are pushing in this direction to overcome the digital divide, as Internet usage becomes more pervasive. However, in dealing with the e-rate to expand universal service beyond plain old telephone service or "POTS", we know that explicit funding mechanisms are an invitation to political and competitive gamesmanship, as well as a public policy vehicle to overcome market failures. In short, explicit funding of an evolutionary concept of universal service under Section 254 and the collateral action of states are no match for the creative capacity of the marketplace to leave major sectors of our society in the dust of the digital age. The focus of the commitment of 706 is to make the marketplace work for everyone on an explicit funding base for "universal service" that can be pushed to the limits of political and competitive reality.
2. In many respects (and I say this as a former state regulator myself), we have unleashed the creativity and innovation of the marketplace and dumped the problems of how all that creativity and innovation plays out on our communities, urban and rural. The field hearings should seek to uncover how communities are wrestling with the problems of achieving ubiquity in both infrastructure deployment and applications development where federal and state policies leave them in the lurch. The competition to roll out high capacity bandwidth—whether upgraded cable or telephone networks, either fiber or wireless—all require some consenting authority of local governmental agencies while prohibiting them from frustrating the operation of competitive policies of higher authority. The Joint Conference should explore how urban and rural communities are requiring competitors to support the development and implementation of even-handed policies, for example, to build an infrastructure base among community-based organizations for innovative development and testing of applications that address the priority needs of underserved communities while advancing skills development for employment in the explosive knowledge industry. What are the options for long term

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<sup>5</sup> Ibid at 35-38.

commitments of competitors to work in partnership with communities to develop market empowering options to philanthropy dependence?

3. Given the highly skewed distribution of income and wealth in the nation, we appear to be entering a golden age of philanthropy. The Joint Conference should give serious consideration to how both corporate-based and foundation-based philanthropy are being used as an alternative to, or support for, market oriented approaches to bridging the digital divide. President Clinton's active involvement in bridging the divide has brought new hope and encouragement to community technology centers and other community-based organizations and institutions engaged in advancing technology literacy and diffusing the use of digital age technologies as tools of individual and community empowerment. At the same time, the growing focus on the digital divide is fostering some philanthropy-based niche marketing of existing content by making "in kind" donations to community-based organizations, potentially increasing their nurturing capacity to advance technology literacy. Highly creative philanthropy is not to be frowned upon, but its needs to be viewed as an alternative to other uses of philanthropy that are made available as social capital.
4. Philanthropy that is a band-aid for market failures is being viewed with increasing concern by community-based technology centers and non-profits. Good-will corporate grants that leave their mark on a technology facility or program for segmented marketing of a given line of products and services are welcomed, but the Joint Conference should look into how those grants are linked to developing markets for the use of the advanced technologies which have a value-base in the community. Market solutions for bridging the digital divide cannot be developed without addressing applications of the advanced technologies that have value to those on the wrong side of the digital divide.
5. It is in this connection that the Joint Conference might make its most valuable contributions to uncovering some "best practices". The Joint Conference should search for answers to why competitors in the digital age of broadband capability are not pouring R&D funds into product development and marketing of innovative products and services that are crafted to the needs and cultures of marginalized communities. Community technology centers and other community-based organizations have demonstrated beyond doubt the enabling and life-enhancing character of the digital age technologies to develop employable skills, advance educational opportunities, improve health care delivery, open up new options for people with disability, etc. More funds are to be made available for these purposes as in the case of technology diffusion funds negotiated in connection with mergers approved by state regulators. The President is calling for a vast increase in community technology centers. Yet there appears to be reluctance on the part of competitors to invest directly in market development that builds on the experience of the technology diffusion centers. The Joint Conference needs to know why market development in marginalized communities is languishing.
6. APT has no magic bullets to advance. However, it does not take an award-winning economist to know that competitive investments require a reasonable return on capital,

measured against alternative investment options. Understandably, competitors are reluctant to invest R&D funds where market demand needs to be nurtured before they can be plucked and alternative market development opportunities are readily exploitable at a high return. Wall Street has no patience with companies that ignore opportunity costs. Their stock goes in the pit. To simply wail about the way market R&D investments are allocated, however, is to ignore how the marketplace actually works. Social values cannot be imposed on a market place that eschews such values—on market theory that has nothing to say about the distribution of income and that assumes income distribution in the society at any given time is optimal. Given this reality, APT urges the Joint Conference to explore how community technology centers are beginning to “network”—and how these centers, as they are expanded, are examining infrastructure linkages so that they may function as integrated community-based domains on the web for developing, beta testing, and marketing of innovative products and services crafted to the needs, priorities, and cultures of marginalized communities. It may feel good at times to criticize the marketplace for its failures, but community groups are beginning to look at how they can organize themselves to make it cost-effective for R&D investments to become the source of empowerment in bridging the digital divide. We urge the Joint Conference to look for these development so that “best practices” may be encouraged and replicated by pro-active policies.

There are many avenues to bridging the digital divide. The above exploratory suggestions barely scratch the surface of the innovative approaches to achieving the ubiquity objectives of Section 706. Much is waiting on the discovery of the Joint Conference. APT wants to be helpful so that your field hearings, in the words of Commissioner Rowe, result in a “call for action.”

I, Ayesha Nichols, an Associate for the Alliance for Public Technology, hereby certify that on March 20, 2000 copies of the foregoing "Comments of the Alliance for Public Technology, In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion" were hand delivered to:

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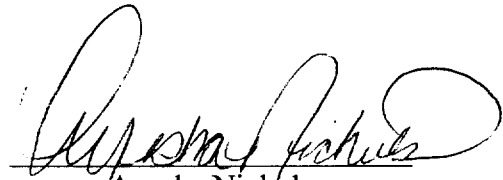
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